

IN THE MATTER OF LICENSE NO. 105529

Issued to: Terry W. HARMER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1977

Terry W. HARMER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 26 October 1972, an Administrative Law Judge of the United States Coast Guard at Long Beach, California admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as an Ocean Operator on board the M/B REDONDO SPECIAL under authority of the license above described, on or about 18 September 1972, Appellant did wrongfully conduct himself in a manner unbecoming an Operator by discharging a dangerous weapon, a rifle, without warning, thereby frightening passengers aboard said vessel while the vessel was at sea.

At the hearing, Appellant was represented by professional counsel and entered a plea of guilty to the charge and specification.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order admonishing Appellant.

The entire decision was served on 13 November 1972. Appeal was timely filed on 6 December 1972.

FINDINGS OF FACT

On 28 September 1972, Appellant was serving as an Ocean Operator on board the M/B REDONDO SPECIAL and acting under authority of his license while the ship was at sea.

On that date Appellant, without warning, fired a rifle at an unknown object in the water. The discharge of the weapon frightened several passengers on board Appellant's vessel.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

(1) the Coast Guard does not have jurisdiction over actions of an Ocean Operator who discharges a firearm in a manner not dangerous to human life; and

(2) the Ocean Operator is not required to give advance notice to passengers prior to discharging a firearm.

APPEARANCE: Appellant, by Michael G. Nott, Esq.

OPINION

I

At the outset it should be noted that Appellant, although represented by professional counsel, pled guilty to the charge and specification. Appellant raised no matters in mitigation that were inconsistent with his plea, thus there was no error on the part of the Administrative Law Judge in allowing the plea to stand.

II

The charge against Appellant is misconduct while operating under the authority of his ocean operator's license. There can be no question but that the Coast Guard does have jurisdiction to decide whether or not Appellant's actions in fact constituted misconduct.

III

It appears that Appellant's appeal is an afterthought and the issues raised should have been raised at the hearing in defense to the charge. Had they been raised, it is conceivable that the result might have been different; however, by his guilty plea Appellant admitted that by his misconduct he frightened passengers. The decisions of the Commandant which recognize and reiterate the principle that matters in defense will not be considered when initially presented on appeal are too numerous to list.

IV

Likewise, there are numerous cases which set forth the duty owed to passengers on board vessels by the owners and operators thereof. The very fact that an ocean operator is licensed by the Coast Guard to carry passengers for hire is notice to the public that such operator has been charged with the duty to act in a responsible manner. Misconduct is defined in part, as "human behavior which a reasonable person would consider to constitute a failure to conform to the standard of conduct which is required in the light of all the existing facts and circumstances." By no stretch of the imagination can Appellant's unheralded discharge of a firearm in the presence of unsuspecting passengers be categorized as a responsible act or in conformance with the standard of conduct required of an Ocean Operator under the circumstances. Appellant's contention that his act was not misconduct because it was not specifically defined by regulation is without merit. It would be impossible to define standards to cover facet of responsible conduct. The applicable standards of

prudence in any given situation are those expected of a mature individual in similar circumstances and it is this standard to which Appellant failed to conform.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California on 26 October 1972, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 12th day of July 1973.

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